

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN BENITEZ,

NO. CIV. S-03-2406 LKK/KJM P

Petitioner,

v.

O R D E R

A.A. LAMARQUE,

Respondent.

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 10, 2005, the magistrate judge granted respondent's motion to dismiss for failure to exhaust administrative remedies, and petitioner was given the option of filing an amended petition containing his exhausted claims within thirty days. Petitioner failed to do so. On June 17, 2005, the magistrate judge recommended that this action be dismissed without prejudice. For the reasons below, this court declines to adopt the magistrate judge's findings and recommendations.

1 On July 11, 2005, petitioner filed objections to the  
2 magistrate judge's findings and recommendations. Petitioner  
3 "apologize[d] to the court for . . . confusion created by [his]  
4 language barrier." He explains that he would like to proceed with  
5 the action on his two exhausted claims. Obj. at 1:19-21. His  
6 objections also set forth the two exhausted claims. Obj. at 2:10-  
7 17. The court will construe the language contained in petitioner's  
8 objection as an amended petition containing the exhausted claims.

9 Accordingly, the court hereby ORDERS that:

10 1. This matter is remanded to the magistrate judge for  
11 further proceedings consistent with this order.

12 2. The magistrate judge shall direct the Clerk to serve this  
13 order and a copy of petitioner's objections, construed as his  
14 amended petition, on respondents.

15 IT IS SO ORDERED.

16 DATED: August 8, 2005.

17 /s/Lawrence K. Karlton  
18 LAWRENCE K. KARLTON  
19 SENIOR JUDGE  
20 UNITED STATES DISTRICT COURT  
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